

March 28, 2006  
Judy Davidson  
300 Weidman Road  
Ballwin MO 63011

Mr. Robert E. Feldman  
Executive Secretary  
Attention Comments/Legal ESS  
Room 3060  
Federal Deposit Insurance Corporation  
550 17th Street, NW  
Washington DC 20429

Subject: Written statement of testimony regarding the Federal Deposit Insurance Application of the Proposed Wal-Mart Bank

As requested, my contact information is as follows:

Judy Davidson  
300 Weidman Road  
Ballwin MO 63011  
1-636-3946500  
jdavidson@ufcw655.org

Dear Mr. Feldman:

Testimony by Judy Davidson of the United Food and Commercial Workers International Union Region 5 – Southcentral will address the UFCW's opposition to Wal-Mart's application for a Utah industrial loan corporation (ILC) charter called Wal-Mart Bank.

The FDIC acknowledges that one of its criteria in assessing Wal-Mart's application is "the risk presented by such depository institution to the Bank Insurance Fund or the Savings Association Insurance Fund." The FDIC as a regulatory institution knows the potential dangers of mixing banking and commerce because ultimately taxpayers and the banking system bear the cost if something happens to Wal-Mart. Wal-Mart's entry into banking will be an unwelcome mix of commerce and banking. In addition, the proposed Wal-Mart bank, by being an ILC, would not be subject to the stricter regulations of bank holding companies.

The thrust of UFCW's comments center on Wal-Mart's record of irresponsible behavior and its non-compliance with laws, standards, and regulations. The

company's behavior raises significant questions about the company's ability to oversee a bank, meet the needs of the communities it would potentially serve, and follow the tenets of the Community Reinvestment Act (CRA).

The FDIC must investigate whether the proposed Wal-Mart Bank will serve "the convenience and needs of the community" is served by the depository institution. The UFCW contends that the conflicts of interests inherent with the mixing banking and commerce would make a Wal-Mart owned bank unable to meet the standard. One of the primary arguments against mixing banking and commerce is to protect depositors—a bank with commercial links may prejudice the interests of its depositors.

The FDIC must also investigate "the general character and fitness of the management of the depository institution." Wal-Mart's pattern of non-compliance demonstrates that it lacks the internal controls that are fundamental for a company to be entrusted with a bank. Wal-Mart has a consistent record of flouting basic laws for fair treatment and safe working conditions, ignoring internal memos that suggest remedies, and failing to act even after major fines and litigation.

Wal-Mart has a documented history of discriminating against women and minorities; systematically hiring and exploiting undocumented workers; improperly handling worker compensation claims; repeatedly violating child labor laws, and wage and hour provisions, and other critical labor laws. The company has a laundry list of ethical violations, and a history of skirting corporate accountability.

The FDIC should also consider the fact that the Community Reinvestment Act (CRA) dictates that "regulated financial institutions have a continuing and affirmative obligation to help meet the credit needs of the local communities." However, Wal-Mart stated in its application that it should be considered CRA exempt. It is unclear whether a Wal-Mart Bank would be able to comply with its directives, since the company has an underlying interest to suppress area competition rather than lending to see competitors develop

In addition, if Wal-Mart is granted a bank, many funds from banks abiding by the CRA will likely go to the Wal-Mart Bank. If the Wal-Mart Bank is exempt from complying with CRA, this will have a negative effect on the total amount of CRA funds that are available to communities. In fact, rather than being committed partners in their communities, all over Missouri Wal-Mart's encroachment has resulted in lost jobs, destroyed small businesses, and cheated taxpayers.

Rejection of this application will uphold the well-grounded policy goals of the nation's financial regulators. For these reasons, the UFCW strongly urges rejection of the proposed purchase.

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Dear Mr. Feldman:

Thank you for the opportunity to speak in opposition to Wal-Mart's application for a Utah industrial loan corporation (ILC) charter called Wal-Mart Bank. My name is Judy Davidson, and I'm speaking on behalf Region Five of the United Food and Commercial Workers International Union.

Wal-Mart's potential expansion into banking poses significant risks for consumers, taxpayers and communities across the nation and right here in Missouri. The FDIC identifies one key factor in assessing Wal-Mart's application as "the risk presented by such depository institution to the Bank Insurance Fund or the Savings Association Insurance Fund." The FDIC knows the potential dangers of mixing banking and commerce, because ultimately taxpayers and the banking system bear the cost if something happens to Wal-Mart. Wal-Mart's entry into banking because will be an unwelcome mix of commerce and banking. And the proposed Wal-Mart ILC would not be subject to the stricter regulations of bank holding companies.

These are serious issues which require strict scrutiny. However, I will focus my comments today on Wal-Mart's record of irresponsible behavior and its non-compliance with laws, standards, and regulations. The UFCW believes that the company's record of reckless actions raises significant questions about the company's ability to oversee a

bank, to meet the needs of the communities it would potentially serve, and to follow the tenets of the Community Reinvestment Act (CRA).

### **Wal-Mart Bank: Can it Serve the Needs of the Community?**

The FDIC must investigate whether the proposed Wal-Mart Bank will serve “the convenience and needs of the community.” We believe that the conflicts of interests inherent with the mixing banking and commerce would make a Wal-Mart owned bank unable to meet that standard.

One of the primary arguments against mixing banking and commerce is to protect depositors—a bank with commercial links may prejudice the interests of its depositors. This concern is intensified in the case of Wal-Mart, which is engaged in nearly every retail segment and is situated in thousands of communities across the United States. The potential for conflicts of interest raises key questions:

- Would a Wal-Mart bank extend credit to local businesses that it potentially competes with—like hardware stores, clothing shops, florists, pharmacies, auto care centers, or grocery stores?
- Would businesses in search of financing be comfortable sharing confidential business plans with Wal-Mart, a potential competitor with a history of co-opting business plans and product designs?
- What will Wal-Mart do to prevent pressure on suppliers and vendors to transfer banking relationships to a Wal-Mart bank? This question is relevant due to Wal-Mart’s history of pressuring vendors and suppliers to contribute to charities that Wal-Mart favors<sup>1</sup>, and for special deals as the price of doing business with Wal-Mart.<sup>2</sup>
- Will Wal-Mart coerce its more than one million “associates” into financial relationships with a Wal-Mart owned bank—such as direct paycheck deposit—to the significant detriment of competing banks that currently service Wal-Mart’s employees? This question is relevant given Wal-Mart’s practice of pressuring employees into raising money for various charities and claiming corporate credit for the contributions, thus burnishing its image in the community.<sup>3</sup>
- What will Wal-Mart do to prevent a recurrence of its previous violation of National Automated Clearing House Association rules? Wal-Mart has

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<sup>1</sup> Ortega also points out (Pg. 195-6) that Wal-Mart has pressured vendors to donate goods for various hurricane relief programs and claimed public credit for the amounts “at the retail price of goods.”

<sup>2</sup> “Mexico’s anti-monopoly commission weighs probe of allegations of price fixing at Wal-Mart Mexico unit” *Financial Times*, 5/28/02

<sup>3</sup> Ortega, pg. 195.

been accused of inducing Florida banks to electronically debit as much as \$600,000 from customers' accounts to cover checks stolen in an armored car heist.<sup>4</sup>

### **Wal-Mart Bank: Questionable Character of Fitness**

The FDIC must also investigate “the general character and fitness of the management of the depository institution.” Wal-Mart’s pattern of non-compliance demonstrates that it lacks the internal controls that are fundamental for a company to be entrusted with a bank.

A company’s willingness to intentionally violate laws protecting workers speaks volumes about the character of that applicant. Wal-Mart has a consistent record of flouting basic laws for fair treatment and safe working conditions, ignoring internal memos that suggest remedies, and failing to act even after major fines and litigation.

*Wal-Mart and Women Employees:* Wal-Mart is the largest employer of women, however the company is the target of the largest class action lawsuit in U.S. history – more than 1.6 million current and former female employees because patterns of discrimination in promotion and pay were found in all regions where Wal-Mart operates in the United States.

*Wal-Mart and Undocumented Workers:* The federal government has repeatedly found Wal-Mart systemically hiring undocumented workers. The government maintains that Wal-Mart executives knew the company was using illegal workers.<sup>5</sup> In one instance, 250 undocumented nightshift janitors were arrested. Many have brought a class action lawsuit against the company alleging that Wal-Mart knowingly coordinated their exploitation. Some of the plaintiffs worked 7 days per week for 8 months, earning \$325 for 60-hour weeks.<sup>6</sup> Included in the lawsuit are charges that Wal-Mart locked janitors in stores overnight, and sometimes did not pay them at all. It was “virtual slavery,” according to the workers.<sup>7</sup>

*Wal-Mart and Child Labor:* The U.S. Department of Labor has alleged that Wal-Mart broke child labor laws in 24 incidences between 1998 and 2002.<sup>8</sup> Wal-Mart denied the charges but agreed to pay the penalty. These abuses appear to be ongoing, with hundreds of violations occurring in states between 1995 and 2005. Wal-Mart was well aware of these issues far before the government investigations. An internal audit conducted in July 2000, one week of time records from 25,000 employees in July 2000 found 1,371

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<sup>4</sup> Bruce Bryant-Friedland, “Wal-Mart’s lost check debits upset customers,” *Jacksonville Times-Union*, September 5, 1997

<sup>5</sup> “Wal-Mart pays \$11M over illegal labor,” *CNN Money*, 2005

<sup>6</sup> Steven Greenhouse, “Suit By Wal-Mart Cleaners Asserts Rackets Violation,” *New York Times*, 10/11/03

<sup>7</sup> “Class Action Against Wal-Mart Picks Up,” *Law.com*, 2005

<sup>8</sup> Ann Zimmerman, “Wal-Mart’s Labor Agreement Is Criticized by Former Official,” *Wall Street Journal*, 2/15/05

instances of minors working too late, during school hours, or for too many hours in a day. There were 60,767 missed breaks and 15,705 lost meal times.<sup>9</sup>

*Wal-Mart and Wage and Hour Violations:* Wal-Mart's operations continued to be marked by pervasive and persistent off-the-clock work, despite litigation exposing the problem.

*Wal-Mart and Worker Compensation:* In terms of worker injuries, Wal-Mart has taken a combative approach to worker compensation claims—so caustic that Washington State ordered the company to relinquish control of its workers' compensation claims handling in 2000 after five audits between 1993 and 1999 showed the company failed to properly handle legitimate claims. Fewer than six companies have been put on similar probation since the regulation took effect in 1972. Wal-Mart is the only employer *not* going bankrupt to have its program seized.

*Wal-Mart and Labor Law:* Wal-Mart has a history of refusing to negotiate with employees who have been organized. In 2000, when a small meat cutting department successfully organized a union at a Wal-Mart store in Texas, Wal-Mart responded a week later by announcing the phase-out of its meat cutting departments nationwide.<sup>10</sup> In fact, a Wal-Mart employee in Quebec filed a request in a Canadian Superior Court seeking a class-action lawsuit against Wal-Mart Canada, saying the retailer's decision to close a recently organized Jonquiere, Quebec store violated the rights of its workers and entitles them to compensation and damages.<sup>11</sup>

In addition, the company has a pattern of ignoring and breaking labor laws. In the last few years, well over 100 unfair labor practice charges have been lodged against Wal-Mart throughout the country, with 43 charges filed in 2002 alone. Since 1995, the U.S. government has issued at least 60 complaints against Wal-Mart at the National Labor Relations Board.<sup>12</sup>

*Wal-Mart and Discrimination:* Wal-Mart has a similarly blemished record on race and other forms of discrimination spanning over the years. In 1997, Equal Employment Opportunity Commission (EEOC) won four verdicts against Wal-Mart in 1997 in cases involving different types of discrimination -- race, gender, and disability. EEOC district office stated, "[t]he common thread [in the cases] was evidence that Wal-Mart made little or no attempt to train its managerial employees in compliance with the federal anti-discrimination laws."<sup>13</sup>

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<sup>9</sup> Steven Greenhouse, "In-House Audit Says Wal-Mart Violated Labor Laws," *New York Times*, 1/13/04

<sup>10</sup> Pan Demetrakakes, "Is Wal-Mart Wrapped in Union Phobia?" *Food & Packaging*, 8/1/03 and Dan Kasler, "Labor Dispute Has Historical Precedent," *Scripps Howard News Service*, 11/3/03

<sup>11</sup> "Quebec Union Seeks Class-Action Suit vs. Wal-Mart," *Supermarket News*, 4/22/05

<sup>12</sup> International Confederation of Free Trade Unions (ICFTU), "Internationally Recognised Core Labour Standards in the United States: Report for the WTO General Council Review of the Trade Policies of the United States," 1/04

<sup>13</sup> "EEOC office claims 4 judgments for '97 Wal-Mart loses in four lawsuits," *San Antonio Express-News*, 11/27/97

*Wal-Mart and its Code of Ethics:* The most telling example of Wal-Mart's inability to maintain accountability is the case of former Wal-Mart Vice Chairman Thomas Coughlin. Wal-Mart claims that Thomas Coughlin had "misappropriated hundreds of thousands of dollars in corporate assets to pay for personal expenditures ranging from the petty to the extravagant." Furthermore, Wal-Mart has implicated dozens of Coughlin's subordinates. In fact, because of the extensive nature of the internal corporate abuse, Wal-Mart has submitted the case to a federal grand jury for investigation. Coughlin has claimed that he submitted false invoices to obtain reimbursements for secret anti-union activities. If true, it is a serious violation of federal labor and criminal law. Amidst these developments, Wal-Mart fired the vice-president who originally reported Coughlin's transactions, which raises serious questions about the company's application of whistleblower protection programs.<sup>14</sup>

*Wal-Mart and Accountability:* Because of Wal-Mart's pattern of ignoring warning signs and inability to abide by regulations, major investors, including the Chairman of the Illinois State Board of Investment and New York City Comptroller requested that Wal-Mart form a committee of independent directors to conduct an evaluation of the internal and government legal and regulatory controls. After such an evaluation they requested that Wal-Mart issue a report by the end of the year. Wal-Mart still has not responded to the shareholder's request.

### **Wal-Mart Bank: Avoiding Community Reinvestment?**

When Congress passed the Community Reinvestment Act (CRA) in 1977 it made clear that all "regulated financial institutions have a continuing and affirmative obligation to help meet the credit needs of the local communities." Wal-Mart stated in its application that it should be considered CRA exempt.

It is unclear whether a Wal-Mart Bank would be able to comply with its directives, since the company has an underlying interest to suppress area competition rather than lending to see competitors develop

The Wal-Mart Bank will accept deposits from non-profit, charitable and education organizations and from individual investors through deposit brokers. These deposits will transfer funds from banks abiding by the CRA to Wal-Mart Bank. This will have a negative affect on the total amount of CRA funds that are available.

In addition, Wal-Mart's business practices have demonstrated that Wal-Mart growth is synonymous with the destruction of local businesses and consolidation of industries. However, Wal-Mart's presence not only adversely affects local business, but also local financial and other institutions that serve the local community. Local businesses tend to invest with local banks, which often reinvest in local communities. Wal-Mart's global

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<sup>14</sup> "Former Wal-Mart Exec files complaint," *CNN/Money*, 5/24/05



approach to profits does little to invest in local communities. Adding a bank to the company's operations would only accelerate Wal-Mart's disinvestments in communities where it operates by allowing Wal-Mart to not only ship revenues to Bentonville, but also other financial deposits.

Certain Wal-Mart practices suggest that rather than seeking to give back to the community, Wal-Mart approaches its area governments expecting to be on the receiving end of public assistance. For instance, an economic development official in Delaware explained that Wal-Mart "expects" public subsidies to be made available such as free land, property tax breaks, bond financing, and infrastructure assistance.<sup>15</sup> A Wal-Mart official stated that "it is common" for the company to request subsidies "in about one-third of all [retail] projects."

Wal-Mart pits communities against each other in order to receive public subsidies. Wal-Mart makes local governments often feel compelled to resort to taxpayer-backed incentives because they fear the loss of tax revenue if a Wal-Mart opens in a neighboring locale.

The first ever national report on Wal-Mart subsidies documented through news searches and interviews at least \$1 billion in subsidies from state and local governments. This however is the tip of the iceberg, because public disclosure requirements are minimal. It is impossible to calculate the total value of subsidies because there is no central information source.<sup>16</sup>

Wal-Mart's expectations for receiving public benefits extend also to their own employees. Wal-Mart offers its employees poverty-level wages and health benefits. The result of this below-average compensation is that hundreds of thousands of employees qualify for public assistance. The estimated total amount of federal assistance for which Wal-Mart employees were eligible in 2004 was \$2.5 billion or approximately \$2,100 per employee.<sup>17</sup>

Rather than being committed partners in their communities, all over Missouri Wal-Mart's encroachment has resulted in lost jobs, destroyed small businesses, and cheated taxpayers. In downtown Washington Missouri, in DeSoto, in Warrenton, and in Lake St. Louis—wherever Wal-Mart has built super-centers—good, living wage jobs have disappeared from communities. As Schnucks Market, Dierbergs, and IGA—family owned stores, independent grocers and union employers were forced to close—workers lost union contracts with pensions, good wages, and affordable health care.

In St. Louis and in Festus Missouri, Wal-Mart took advantage of tax increment financing, to attract Wal-Mart to those communities. Taxpayers funded roads, transportation projects and other subsidies so Wal-Mart would come to town. Just a few years later,

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<sup>15</sup> Phil Mattera and Anna Purinton, "Shopping For Subsidies: How Wal-Mart Uses Taxpayer Money to Finance Its Never-Ending Growth," *Good Jobs First*, 5/04

<sup>16</sup> *ibid*

<sup>17</sup> "Harper's Index," *Harper's Magazine*, Vol. 310, No. 1858, 3/05

Wal-Mart has abandoned those stores, leaving its big empty buildings behind as eyesores, and leaving the community with unexpired tax increment finance benefits. Taxpayers in these towns are still paying today to subsidize the Wal-Marts of yesterday—months and years after the company boarded up their stores.

Wal-Mart's blatant disregard for its communities, and their irresponsible actions must be considered by the FDIC. In example after example, the company has failed to remain accountable to customers, employees, communities, shareholders, and regulators. All of this raises serious concerns about its application. Wal-Mart has an established pattern of irresponsible, and in many cases unethical and illegal, practices. This is precisely the type of information that the FDIC needs in order to fully consider and examine the application of Wal-Mart, and the character of the company behind that application.

Rejection of this application will uphold the well-grounded policy goals of the nation's financial regulators. For these reasons, the UFCW strongly urges rejection of the proposed purchase.

Thank you for your consideration of this submission. Please feel free to contact us for clarification, amplification or to respond to any questions.

Sincerely,

Judy Davidson